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FREDERICTON, N.B.

Advisory Council on the Status of Women
Conseil consultatif sur la condition de la femme

Response

of the

New Brunswick Advisory Council
on the Status of Women

to

"Towards a World Family:
A Report Respecting Human Rights in New Brunswick"

submitted to the
Standing Committee on Law Amendments

Legislative Assembly

February 6, 1991
Fredericton, N.B.

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General Comments

The New Brunswick Advisory Council on the Status of Women wholeheartedly supports the Report, "Toward a World Family". We urge the government to implement the recommendations of the Report as soon as possible. Our main concern with the Report is in ensuring that it is implemented in a manner that actually achieves its objectives.

Under international agreements and the Canadian Charter of Rights and Freedoms, the Canadian provinces have a legal obligation to promote equality. As the Report states, being part of a world family, New Brunswickers have some fundamental human rights. Our province's commitment to the rights of its citizens would be greatly enhanced by the measures recommended by the Report, such as the adoption of a pre-eminent, comprehensive human rights Charter, the creation of a strong independent Commission and the establishment by the Executive Council of a Committee on Human Rights.

We especially applaud the Report's main proposal of a New Brunswick Charter of Rights and Freedoms which would go beyond anti-discrimination provisions to incorporate a declaration of the rights and responsibilities of New Brunswickers.

The Report emphasizes public education, while also giving appropriate importance to the legal structures needed to ensure compliance with human rights and responsibilities. The Advisory Council applauds this dual approach because we are convinced that one goes with the other and neither is effective alone.

The review of our human rights legislation and administrative structures must have real benefits for those whose rights have been denied. It must have the potential to have an impact on the lives of New Brunswickers in need of protection, including persons with limited financial means. For this to happen, we believe that as much attention must be paid to how it is implemented as is paid to the language of the Charter and the structure of the Commission. The financial resources provided to the Commission, the selection process of Commission members and adjudicators, the accompanying public information campaign and the legal assistance available to persons who believe their rights have been denied are issues that the Advisory Council considers to be as crucial to a successful review of human rights in New Brunswick as what is contained in any new legislation.

A strong Charter and a strengthened Commission are essential but not adequate in themselves to ensure that more New Brunswickers live in equality and can obtain redress from discrimination. Just as essential are measures to make it possible for ordinary New Brunswickers to be informed of their rights and to have real access to the protection of their rights. In this regard, we especially commend the Report's recommendation that the right to a lawyer be entrenched in the proposed Charter of Rights and Freedoms.

A well-written Charter document is clearly not enough. We know, for example, that the Quebec Charter of Rights and Freedoms was hailed as a progressive model law when it was adopted 16 years ago. The Quebec Human Rights Commission is now criticized by human rights groups and by a recent study[1] for its inefficiency and its lack of conviction in its promotion of rights. That recent study concluded that unless there was an eyewitness to the discriminatory act, it was nearly impossible to win a case with the Quebec Commission.

How do we ensure that Commissions are receptive to complaints and fulfill their mandate of actively promoting the respect of rights? The Advisory Council believes the Report's recommendations concerning the Commission's structure and powers provide some guarantees that it will play the role that is needed. We add the following recommendations:

1. - that the budget provided to the New Brunswick Human Rights Commission be substantially increased to enable it to conduct sustained public education campaigns, to deal expeditiously with all complaints and to conduct research and statistics-gathering activities;

2. - that all the Commission members be appointed by the Legislative Assembly on the legislative motion of the Premier and the Leader of the Opposition.

3. - that all Commission members who are selected have previously shown some interest and support for women's right to equality.

4. - that the panel of adjudicators be selected by the Lieutenant Governor in Council from lists submitted by groups involved in the promotion of human rights.

5. - that a public campaign be funded to provide information on human rights and to promote respect for rights and recognition of responsibility to others.

6. - that the funding of the provincial legal aid program be increased so that it covers more civil matters, including cases where complainants who are unsatisfied with the Human Rights Commission's or a Board of Inquiry's decision and who have limited financial means wish to appeal to a Court.

We suggest two other measures that would ensure greater social justice for disadvantaged groups. One is a fund to establish precedents under the new Charter; the other is an addition to the proposed Charter to ensure equality of the sexes. Although the proposed Charter would include a declaration of all the fundamental and other human rights and responsibilities, the proposed Commission's powers would only extend to enforcement of the Charter's anti-discrimination provisions. We understand the need for these types of limits to the Commission's mandate. However, we believe that some measures must be taken to ensure that a violation of these fundamental, legal, social, democratic, cultural, economic and other rights can be challenged by even those with limited financial means. We also believe that a systematic approach to establishing precedents and challenging violations is crucial.

The federal Court Challenges Program is an example of an attempt to ensure that groups and individuals have real access to the protection of the Canadian Charter. It was established by the federal government to fund in whole or in part costs incurred by individuals or non-profit groups to initiate court actions challenging federal legislation or practice.

A similar fund in New Brunswick could ensure that important rights cases that could lead to significant gains for equality-seeking groups reach the courts. The rights issues raised by such cases would be those that could not be addressed by the proposed New Brunswick Human Rights Commission and would deal with legislation, policies and practices of the provincial government. Although the majority of the funding for a provincial Fund would have to come from the provincial government, private foundations and other donors could be interested in such a venture.

The federal Court Challenges Program had initially been funded over five years ending in 1990 but this period was inadequate for cases to be identified, developed and brought to court. The federal Program has just been renewed for another five years. As the Program states, "members of disadvantaged groups typically have not had access to lawyers or the courts to defend their rights nor had experience in planning litigation".

The Advisory Council therefore recommends:

7. - that a New Brunswick Charter Challenge Fund be established providing funding for development and support of selected rights cases based upon the rights contained in the proposed New Brunswick Charter of Rights and Freedoms. The cases should be selected for their importance to historically disadvantaged groups and their potential to bring significant gains for these groups. The cases should challenge provincial legislation, policy or practice. Consideration should be given to a permanent Fund, or alternatively to a 10 to 15 year lifespan for the Fund.

Definition and Prohibited Grounds of Discrimination

The Advisory Council had recommended that family status, sexual orientation, source of income and pregnancy be added to the list of prohibited grounds and we are pleased to note that the Report concurs. We also applaud the additions respecting seizure of pay and place of residence. We believe that a self-respecting society would not allow discrimination based on any of these grounds.

The Report recommends that the definition of discrimination in the proposed Charter include, in effect, not only direct intentional discrimination but also indirect and unintentional discrimination such as acts or omissions that result in discrimination against a member of a group. Discrimination against women is most often systemic, or simply "the way things have always been done", whether for example, it's the hiring and promotion practices of an employer or social policies and their different impact on certain groups. The Advisory Council supports the recommendations concerning the definition of discrimination.

Although the amendments proposed by the Report to the anti-discrimination provisions will strengthen the protection of New Brunswick women's rights, we have one further recommendation. To ensure that all rights in the Charter are guaranteed equally to men and women, and that this right to equality is not overriden by other considerations, we believe an interpretive provision should be added, similar to what the Report recommends in recommendation 4.17 concerning the multicultural heritage of New Brunswickers.

The Advisory Council therefore recommends:

8.- that there be incorporated in the New Brunswick Charter of Rights and Freedoms, an interpretive provision similar to that contained in section 28 of the Canadian Charter of Rights and Freedoms, stating that everything in the New Brunswick Charter is guaranteed equally to women and men.

Conclusion

The New Brunswick Advisory Council on the Status of Women urges the government to adopt as soon as possible legislation based on the recommendations of the Report, "Toward a World Family".

The current legislation and structures concerned with human rights in New Brunswick are in need of updating, having remained largely unchanged since 1971. Our understanding of the effective protection and promotion of human rights and our international obligations have changed over the last 20 years. The Report's recommendations would improve the protection and recourse offered to the victim of discrimination but it also would propose a shield of basic rights and freedoms enunciated for the first time in a comprehensive pre-eminent law. The Advisory Council believes this is necessary for New Brunswick to meet its obligations towards the realization of the promise of equality of its citizens.

Notes

1. Côté, Andrée and Lemonde, Lucie, Discrimination et Commission des droits de la personne, Editions Saint-Martin Montréal, 1988.